

# United States Senate

WASHINGTON, DC 20510

April 21, 2010

The Honorable Robert M. Gates  
Secretary  
United States Department of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Secretary Gates:

We write to urge that the Department of Defense engage in formal consultations with federally recognized Indian tribes and tribal stakeholders in the development of new Federal procurement regulations required by section 811 of the National Defense Authorization Act of 2010 (P.L. 111-84) ("Act").

Section 811 of the Act requires that all Federal agencies provide written justification and approval for all sole-source awards above \$20 million. Native-owned 8(a) firms are currently the only contractors in the 8(a) program that are eligible to receive such contracts. While we welcome fair and just oversight of the Native 8(a) program, section 811 was included at the 11th hour in a conference agreement without any input from Native stakeholders. We fear these new requirements, which have yet to be articulated, are creating a chilling effect on all contracting officers, government wide, limiting procurement opportunities for Native-owned firms.

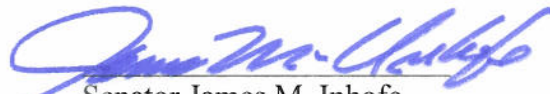
The United States has a unique political relationship to its federally recognized Indian tribes. The relationship has been defined by the federal trust doctrine, as well as treaties, executive orders, and federal statutes. Federally recognized Indian tribes, Alaska Native corporations formed pursuant to the Alaska Native Land Claims Settlement Act, and Native Hawaiians organizations are eligible for contracting preferences that support the economic development of rural and remote Alaska Native villages and Indian reservations.

Our Nation's first Americans continue to have the highest education and health disparities compared to other Americans. The myriad effects of poverty including substance abuse, youth suicide, and domestic violence permeate Native communities. The Native American 8(a) contracting program is one of the few government programs that enable Native communities to create economic opportunity with the hope of lifting entire communities out of the pervasive effects of poverty.

Executive Order 13175, signed by President Clinton on November 6, 2000, directed each federal agency to create "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." On November 5, 2009, President Obama issued a memorandum for the Heads of Executive Departments and Agencies directing the head of each Federal agency to submit a detailed plan of action to implement Executive Order 13175 within 90 days. We understand that the Department of Defense released its plan of action in January, 2010.

We strongly urge that in the development of new regulations affecting Native-owned 8(a) firms the Department of Defense engage in formal tribal consultations as required by Executive Order 13175. On November 5, 2010, President Obama stated that "history has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable, and at times, devastating and tragic results." We encourage that the Department of Defense ensure that section 811 is not remembered in history as another ill-conceived federal policy toward our Nation's first Americans.

Sincerely,

  
\_\_\_\_\_  
Senator Lisa Murkowski  
\_\_\_\_\_  
Senator James M. Inhofe